

**REMARKS/ARGUMENTS**

This Communication is in response to the Office Communication mailed December 14, 2006 regarding a Requirement for Information under 37 C.F.R. §1.105. Consideration of the following remarks and comments, and allowance of the pending claims, is respectfully requested.

The Office Action indicates on page 2 that an issue of public use or on-sale activity has been raised in this application. In order to properly consider patentability of the claimed invention under 35 USC 102(b), the Office Action indicates that the record needs to be clarified as to whether there was public use or on-sale activity of the claimed subject matter prior to 12 January 1999.

Applicant has diligently researched the issue of public use and/or on-sale activity prior to 12 January 1999. No evidence was discovered indicating the occurrence of any on-sale activity or public use regarding Assignee's published vMerchant User Guide prior to 12 January 1999, in spite of marked copyright dates of 1998 and 1999. A thorough search of Assignee's activities during the timeframe in question has revealed no evidence of publication or on-sale activity. Attempts were made to contact each of the original inventors through the Assignee in order to verify evidence of any publication or on-sale activity prior to this date. An attempt was also made to locate any employee of Applicant who might have knowledge of such activity, but such search did not locate any information prior to the date in question. Company records further indicate the product was not released to the public until summer of 1999.

An internal search of Internet sources was conducted by representatives of the Assignee to search public records for predecessor in interest activities before the date in question. This process consisted of an exhaustive search in a wide array of Internet sources related to Assignee's predecessor in interest and the vMerchant product name. No results were obtained prior to the date of inquiry 12 January 1999, although evidence of vMerchant release 1.2 was found with a date of Sep. 27, 1999.

Finally, Applicant diligently hired an outside search service to further research on-sale activity and publication prior to 12 January 1999. A copy of the independent report is attached to this communication as Exhibit A. No evidence of commercial activity of any kind was found prior to August 23, 1999.

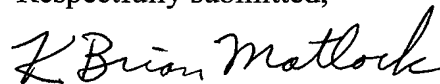
In light of the diligent efforts made by the Assignee and its representatives, Applicant believes in good faith that no publication nor on-sale activities occurred prior to the date of inquiry, 12 January 1999.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-6330.

Respectfully submitted,



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